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3. Execution (§ 196*)—Claim to Property—Trial—Jury Question.—Where, in proceedings by a claimant to settle title to property taken under execution against another, the time of giving the suspending bond was shown by the bond, and the date of the beginning of the proceedings to settle title appeared on the face of the record, it was error to submit to the jury the question as to when the suspending bond was given and when the proceeding was instituted, but the court itself must determine the questions.

[Ed. Note.—For other cases, see Execution, Cent. Dig. § 576; Dec. Dig. § 196.* 5 Va.-W. Va. Enc. Dig. 407.]

Error to Circuit Court, Dickenson County.

Petitions by R. E. Hensley and J. B. Crouch, claiming the ownership of personalty, on which executions in favor of the Fields-Watkins Company and the Barker-Jennings Hardware Company against A. E. Sprinkle and another had been levied. From a judgment for petitioners, execution creditors bring error. Reversed, annulled, and entered.

Sutherland & Sutherland and *W. W. Bird*, all of Lebanon, for plaintiffs in error.

Skeen & Skeen, of Clintwood, for defendants in error.

FULTON *v.* COX et al.

Sept. 9, 1915.

[86 S. E. 133.]

1. Deeds (§ 211*)—Cancellation—Fraud—Sufficiency of Evidence.—Evidence in a suit by heirs of the grantor for cancellation of a deed held insufficient to constitute the necessary clear proof of the alleged fraud.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 637-647; Dec. Dig. § 211.* 11 Va.-W. Va. Enc. Dig. 890.]

2. Equity (§ 147*)—Multifariousness.—If convenience in the administration of justice is accomplished by the mode of proceeding adopted, the objection of multifariousness will not lie, unless the course pursued is so injurious to a party as to make it inequitable to accomplish the general convenience at his expense.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 340; Dec. Dig. § 147.* 5 Va.-W. Va. Enc. Dig. 130.]

3. Landlord and Tenant (§ 28*)—Leases—Fraud.—A lease of property at the request of the lessee for a lump sum, for the lives of himself and wife, is not fraudulent merely because it results to the lessor's advantage through the early death of the life tenants.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 82-84; Dec. Dig. § 28.* 7 Va.-W. Va. Enc. Dig. 71.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

4. Equity (§ 427*)—Pleading, Proof and Decree—Conformity.—The bill merely alleging fraud in procuring a deed and asking its cancellation, the court sustaining the deed cannot cancel for fraud a lease from the grantee to the grantor; the proof and decree being required, in equity as at law, to conform to the pleadings.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1001-1014; Dec. Dig. § 427.* 11 Va.-W. Va. Enc. Dig. 890.]

Appeal from Circuit Court, Grayson County.

Suit by one Cox and others against R. C. Fulton. From an adverse decree defendant appeals, and complainants assign cross-error. Reversed and rendered.

W. S. Poage, of Wytheville, *R. L. Kirby*, of Independence, *J. H. Rudy* and *J. D. Perkins*, of Marion, for appellant.

J. S. Bourne and *H. A. Cox*, both of Independence, for appellee.

HARMAN *v.* MOSS et al.

Sept. 9, 1915.

[86 S. E. 111.]

1. Tenancy in Common (§ 33*)—Contracts between Cotenants—Rights and Obligations.—A contract between owners of undivided interests in real estate which grants to one of them the right to buy or sell the timber on the land at a specified sum per acre fixes the minimum price for which he may sell the timber on his electing not to buy, and where he makes a sale he must obtain the best price obtainable and account to the co-owners for their share of the proceeds.

[Ed. Note.—For other cases, see Tenancy in Common, Cent. Dig. § 25; Dec. Dig. § 33.* 8 Va.-W. Va. Enc. Dig. 104.]

2. Tenancy in Common (§ 31*)—Services by Cotenant—Sales—Compensation.—Where one of several owners of undivided interests in land authorized to sell the timber thereon for a specified price per acre made a sale, he was entitled to reasonable compensation therefor.

[Ed. Note.—For other cases, see Tenancy in Common, Cent. Dig. §§ 93, 94; Dec. Dig. 31.* 8 Va.-W. Va. Enc. Dig. 122.]

3. Specific Performance (§ 114*)—Contracts Enforceable—Actions.—A plaintiff, to entitle himself to specific performance of a contract, must allege and prove full compliance with the contract on his part, or, in a proper case such acts of part performance that a refusal of full performance will place him in a situation which does not lie in compensation and he must allege facts constituting per-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.